

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

MCLANE SERVICES, INC.

PLAINTIFF

VS.

CIVIL ACTION NO. 3:04CV974LS

**ALSTOM POWER, INC.; ALSTOM ENERGY
USA, INC. and ALSTOM POWER, INC.**

DEFENDANTS

ORDER

This matter came before the court on the Defendant's Motion to Compel, by which it seeks responses to discovery requests that were served on December 1, 2005, and to which the Plaintiff has not responded. The Defendant argues that discovery in this matter was to have been completed by January 1, 2006, and the deadline for filing motions expired on January 15. Thus, it argues, this Motion, which was not filed until April 6, 2006, should be denied as untimely. Unif. Local R. 26.1(e) requires discovery motions to be filed "so that they do not affect the discovery deadline." This matter was originally set for trial on May 1, 2006, a date that is no longer viable due to the pendency of dispositive motions. Therefore, the court finds that consideration of this Motion will not affect the discovery deadline, which has expired, nor will it prejudice the parties in trial preparation.

Unif. Local R. 7.2(K) states that any motion filed after the motion-filing deadline "may be denied solely because the motion is served untimely." Thus, denial of a motion in those circumstances is discretionary. Here, the discovery at issue was served so as to elicit responses before the discovery deadline, although barely so. Unif. Local R. 26.1(B)(1). The Plaintiff's complete failure to serve discovery responses prompts this court to consider this Motion, despite the Defendant's failure to submit it earlier.

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Compel is hereby **granted**, and the Plaintiff shall serve responses to the discovery requests at issue on or before May 12, 2006.

IT IS SO ORDERED, this the 28th day of April, 2006.

S/James C. Sumner
UNITED STATES MAGISTRATE JUDGE